IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 18679 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GURUDEYALSINGH DARBARSINGH BAJVA & 1 - Petitioner(s)
Versus
THE STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR.MRUDUL M BAROT for Petitioner(s) : 1 - 2.
MR KRUNAL PANDYA, AGP for Respondent(s) : 1,
None for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 22/08/2007

ORAL JUDGMENT

Rule. Mr. Krunal Pandya, Ld. AGP waives service of rule on behalf of respondent no. 1. Though Dena Bank is respondent no. 2, it is as such not concerned with the reliefs prayed for in the petition. Hence its presence is

dispensed with. At the request of the learned advocates for the parties the matter is taken up for hearing today.

2. The petitioner has approached this Court to challenge order dated 8/5/2007 passed by the M.A.C. Tribunal [Aux.] & Presiding Officer, Fast Track Court, Valsad, below Exh. 1 being Misc. Application No. 28 of 2007 in M.A.C. Petition No. 1930/2002 [Old No. 506/2001]. By the said order, the application of the petitioner for withdrawal of the amount invested in the fixed deposits before the date of maturity has been rejected. By award dated 24/4/2006 the Tribunal has awarded a sum of Rs.4,83,500/- by way of compensation to the petitioners for the death of their son in a vehicular accident. The Tribunal has directed that 70% of the award amount together with interest and costs to be invested in any nationalized bank in fixed deposit for a period of 7 years. At present the said amount is lying in fixed deposit with Dena Bank, Station Road Branch, Navsari. The said deposit is subject to certain conditions, one of them being that the petitioner shall not raise any loan on such deposit. In the present petition it is averred that for the purpose of marriage of another son of the petitioners, some amount was borrowed by petitioner no. 1 from his brother and to repay the same, he had issued a cheque, which had ultimately bounced. In view of the same, brother of petitioner no. 1 has filed criminal complaint in the Court of the Ld. Chief Judicial Magistrate at Gurudaspur [Punjab] under the provisions of section 138 of the Negotiable Instruments Act. The complaint is filed for a sum of Rs.5 lacs. It is the say of the petitioners that if the amount

placed in the fixed deposit is allowed to be withdrawn, the liability can be discharged and petitioner no. 1 can be free from the criminal prosecution.

3. I have perused the record of this petition. I have also heard Mr. Mrudul Barot, learned advocate for the petitioner. He has submitted that the need to withdraw the amount is genuine. He has also submitted that if the petitioner no. 1 is not allowed to discharge the liability, there is every possibility that he may have to face serious consequences including imprisonment. It is his submission that petitioner no. 1 is aged 60 years and he does not have adequate means to discharge the outstanding liability. He has made a statement at the bar that against the award of the Tribunal no appeal has been preferred nor there is any objection from petitioner no. 2.

4. Considering the aforesaid facts and also the submissions made by Mr. Barot, it appears that the outright withdrawal of the amount by the petitioners will not be desirable; instead the condition imposed by the Tribunal can be modified to certain extent. By condition no. 4 (1) contained in the operative portion of the judgment of the Tribunal the petitioners have been prohibited from raising any loan against the fixed deposit. The said condition is now required to be modified and it is hereby modified. The petitioners will be at liberty to raise loan against the said deposit in accordance with the rules and regulations of the bank to enable them to discharge the liability.

With the aforesaid, the petition is partly allowed. Rule made absolute to the aforesaid extent with no order as to costs.

[Akshay H Mehta, J.]

* Pansala.